

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL HITCH)	
Claimant)	
VS.)	
)	Docket No. 247,582
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
INSURANCE COMPANY)	
STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Claimant appealed the January 16, 2002 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on June 14, 2002, in Wichita, Kansas.

APPEARANCES

Dale V. Slape of Wichita, Kansas, appeared for claimant. Eric K. Kuhn of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a right knee injury allegedly caused by a series of repetitive mini-traumas sustained by claimant each and every workday from either March or July 1998

through the last day that claimant worked for respondent on September 30, 1998.¹ In the January 16, 2002 Award, Judge Clark determined that claimant had sustained an additional two percent functional impairment to the right lower extremity.

Claimant contends Judge Clark erred. Claimant argues the Judge should have found that claimant sustained either an additional 13 percent functional impairment to the right lower extremity as determined by Dr. Pedro A. Murati or an additional seven percent functional impairment as determined by Dr. Anthony G. A. Pollock. Accordingly, claimant requests the Board to increase the award of permanent disability benefits.

Conversely, respondent and its insurance carrier contend the Award should be affirmed. They argue Dr. Philip Mills' opinion that claimant sustained an additional two percent functional impairment to the right lower extremity should be given deference and adopted by the Board as Dr. Mills was selected by the Judge to provide an independent medical evaluation.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed. The Board finds and concludes that claimant has sustained an additional two percent functional impairment to his right lower extremity as a result of the work activities that he performed for respondent through his last day of work for respondent on September 30, 1998.

The parties agreed that claimant injured his right knee while working for respondent through September 30, 1998. The parties also agreed that claimant's accidental injury arose out of and in the course of employment with respondent.

Three doctors provided functional impairment opinions in this claim. Dr. Murati, who was hired by claimant to provide an expert medical opinion in this claim and who examined claimant in November 2000, testified that claimant now has a 17 percent functional impairment to the right lower extremity under the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides). According

¹ The application for hearing filed on September 2, 1999, with the Division of Workers Compensation alleges an accident date from July 1998 through September 30, 1998. But on page 5 of the October 26, 1999 preliminary hearing transcript, the alleged date of accident was noted as being from March through September 1998.

to Dr. Murati, if one used the *AMA Guides'* combination charts and subtracted (or "de-combined") five percent for a preexisting functional impairment, the result would equal 13 percent. Accordingly, Dr. Murati believes claimant sustained an additional 13 percent functional impairment to the right lower extremity as a result of the injury which is the subject of this claim.

Respondent and its insurance carrier deposed Dr. Pollock, who saw and treated claimant for his knee injury on several occasions beginning August 25, 1998. On November 10, 1999, the doctor performed arthroscopic surgery on claimant's right knee to debride a medial meniscus tear. Following surgery, on November 17, 1999, the doctor released claimant from treatment to return as needed. The doctor last saw claimant in April 2001, when claimant complained of additional pain and catching in his knee. In November 2000, Dr. Pollock issued a functional impairment opinion in which the doctor rated claimant's lower extremity under the *AMA Guides* at nine percent, 25 percent of which preexisted the most recent injury. Accordingly, Dr. Pollock believes claimant sustained an additional 6.75 percent functional impairment to the right lower extremity as a result of the present injury.

The Judge appointed Dr. Mills to evaluate claimant as an independent medical examiner. Dr. Mills saw claimant in March 2001 and determined that claimant has a two percent functional impairment to the right lower extremity due to the arthroscopy and partial medial meniscectomy. The doctor also believes that claimant now has a seven percent functional impairment for the arthritis in claimant's knee, but if that functional impairment were used he would deduct five percent for preexisting impairment. On page six of the March 21, 2001 evaluation report to Judge Clark, the doctor wrote, in part:

Based on the Fourth Edition of *The American Medical Association's Guides to the Evaluation of Permanent Impairment*, he would have a 2% permanent partial impairment to the right lower extremity as a result of the arthroscopy and partial medial meniscectomy. Or, he would have either a 2% for the meniscectomy or a 7% for the arthritis. One or the other could be used but not both. If the 7% was used, I would subtract out the previous 5% which would leave him with a 2%. If the arthroscopy is used, he would have a 2%. Either way, he arrives at a 2% impairment in addition to his prior 5%.

Accordingly, Dr. Mills believes claimant has sustained an additional two percent functional impairment as a result of the work-related injury with respondent.

The Judge adopted Dr. Mills' opinions and found that claimant had sustained an additional two percent functional impairment as the result of the work-related accident with respondent. The Board affirms. Dr. Mills was selected as an independent medical

examiner and, therefore, owed no allegiance to any particular party. Dr. Mills' opinions are credible and persuasive.

AWARD

WHEREFORE, the Board affirms the January 16, 2002 Award entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director